IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3865 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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MANUBHAI K MAHIDA

Versus

MANORAMABEN GUNVANTRAI OZA SINCE DECEASED THRO HEIRS, L/R

Appearance:

1. Special Civil Application No. 3865 of 2001

MR YN RAVANI for Petitioner No. 1

MR AB MUNSHI for Respondent No. 1-1/2

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/07/2002

ORAL JUDGEMENT

Rule. Mr.Munshi waives service of rule on behalf of respondent Nos 1-1/2. Shri Rajendra Patel, Chairman, Chairman of respondent No.2 society waives service of

rule. With the consent of parties matter is taken up for final hearing.

2. The present petition is preferred by the petitioner against the order dated 30.10.2000 passed by the Gujarat State Cooperative Tribunal in Appeal No.451/00 and the order, dated 19.6.2000 passed by the Registrar, Board of Nominees in Lavad Suit No.170/00.

3. The short facts of the case are that one Manoramaben Gunvantrai Oza preferred Lavad Suit No.170/00 (Old No.1642/63) before the Registrar, Board of Nominees for the relief to set aside the resolution dated 6/1/63 of the society and in the said suit it was also prayed that the possession of Bungalow No.24 be handed over to the plaintiff by the defendant. It appears that on 28.4.2000 one settlement purshis came to be produced in the proceedings of Old case No.1642//63 and the learned nominee has decreed the suit upon the said settlement purshis by passing order below plaint on 19.6.2000.

4. The petitioner herein preferred Appeal No.451/00 before the Gujarat State Cooperative Tribunal and the learned tribunal for the reasons recorded in the order as per the judgment dated 30.10.2000 dismissed the appeal. The said order of the tribunal in appeal as well as order passed by the Nominee are under challenge in this petition.

5. A perusal of the order passed by the tribunal shows that the tribunal has mainly proceeded on the basis that since the settlement purshis was submitted before the Nominee and the Nominee has acted upon the said purshis, the appeal is not maintainable and the appeal is therefore dismissed by the tribunal. The important aspect of the case which has not been considered by the tribunal is that submission of purshis itself is not sufficient but the said consent terms or consent purshis are required to be admitted before the court. It is true that the provisions of Civil Procedure Code are not applicable to the suits before the Nominee in strict sense. However, it is settled that the Nominee has to decide the suit as per equity and good conscience. Moreover, as far as far as possible the provisions of C.P.Code are having a guiding effect. Provisions of Order XXIII Rule 3 for compromise of suits read as under:

> "Compromise of suit--Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by

the parties or where the defendant satisfies the plaintiff in respect of the whole any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit.

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation: An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this rule."

As per the aforesaid provisions the court has to arrive at a satisfaction regarding the writing signed by the parties. Normally, when the purshis is being submitted before the court, the court below the purshis records the presence of parties for the settlement and records the satisfaction regarding settlement by taking not of admission before the court. In the present case, the perusal of the purshis which is produced before this court at page 43 shows that no such satisfaction is recorded and there is only a noting as "recorded". Since the aforesaid is a mandatory requirement for the purpose of the court which has to act upon the purshis in the proceedings of civil suit. I find no reason for not to apply such principles of CPC as provided under Order XXIII Rule 3 to the proceedings of Lavad Suit before the Nominee also because on the contrary if such procedure is made applicable , the chances of fake or bogus settlements can be avoided and if the party concerned has admitted the the contents of the purshis there will be no room for backing out from the said purshis/settlement. Even otherwise also, with a view to authenticate the settlement, it is just and proper that such settlements are recorded before the presiding officer of the court. The aforesaid procedure is also in consonance with equity and good conscience. In the present case, said aspect is not at all taken care and the tribunal has thrown away appeal only on the ground that since there is a

settlement, the appeal is not maintainable.

6. I am of the view that the tribunal has committed clear error apparent on the face of record and as a matter of fact the Nominee also could not have, in any case, passed the consent decree in the absence of verification regarding genuineness of the settlement. Since the aforesaid mandatory aspect is not followed by the Nominee the consent decree passed by the Nominee dated 19.6.2000 deserves to be quashed and set aside and as a consequence thereof the order passed by the tribunal in appeal also deserves to be quashed. I am of the view that when the parties have not settled the matter in view of the averments made in the petition, the relief can only be granted after the adjudication of the matter.

7. In the result, the judgment and award dated 19.6.2000 passed by the Registrar, Board of Nominees in Lavad Suit No.170/00 (Old Case No.1642/63) and the judgment and award dated 30.10.2000 passed by the tribunal in Appeal No.451/00 are hereby quashed and set aside. It is further directed that the Nominee shall take up the Lavad Suit for its adjudication on merits and shall render the decision within a period of three months from the date of receipt of writ of this court. Petition stands allowed to the aforesaid extent and Rule is made absolute accordingly. There shall be no order as to costs.

8. It is needless to clarify that the Nominee shall decide the suit independently upon the material of the suit.

19.7.02 (JAYANT PATEL,J)